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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

IBEW LOCAL 595 TRUST FUNDS et al

Plaintiffs,

v.

ROBERT WILSON, et al

Defendants

CASE NO. 3:10-cv-01467 JL

**JOINT CASE MANAGEMENT
STATEMENT AND REQUEST
FOR CONTINUANCE**

DATE: December 15, 2010

TIME: 10:30 A.M.

COURTROOM: F, 15th Floor, San
Francisco

TO ALL PARTIES, THEIR ATTORNEYS OF RECORD, AND THE COURT:

Plaintiffs IBEW Local 595 Health & Welfare Trust Fund; IBEW Local 595 Pension Fund, IBEW Local 595 Money Purchase Pension Trust Fund; IBEW Local 595 Vacation Fund; IBEW Local 595 Apprentice & Training Fund; Electrical Contractors Trust; Contractors Administration Fund; Labor Management Cooperation Fund; Electrical Industry Service Corporation; Victor Uno in his capacity as trustee of the IBEW Local 595 Trust Funds and officer of the Electrical Industry Service Corporation; and Don Campbell in his capacity as trustee of the IBEW Local 595 Trust Funds and officer of the Electrical Industry Service Corporation, and Defendant Robert Wilson, individually and

1 as owner and alter-ego of Wilson Electric Co., through their respective counsel of record, file this Case
2 Management Conference Statement and Request for Continuance.

3 Plaintiffs are preparing to move for summary judgment. Accordingly, the parties request that
4 the case management conference set for December 15, 2010 be continued until after the January 19,
5 2011 hearing on Plaintiffs' motion.

6 **1. Jurisdiction and Service:**

7 The jurisdiction of this Court is invoked pursuant to Sections 502 and 515 of the Employee
8 Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1132 and 29 U.S.C. §1145.
9 Jurisdiction also exists under 28 U.S.C. §1337 and §2201. Venue is proper in the Northern District of
10 California because Plaintiff Trust Funds are administered in this District, the breaches of Defendant's
11 obligation to make contributions to these funds occurred in this District, and because the Defendant
12 employer operates its business in this District.

13 **2. Facts:**

14 Plaintiffs IBEW LOCAL 595 HEALTH & WELFARE TRUST FUND; IBEW LOCAL 595
15 PENSION FUND, IBEW LOCAL 595 MONEY PURCHASE PENSION TRUST FUND; IBEW
16 LOCAL 595 VACATION FUND; IBEW LOCAL 595 APPRENTICE & TRAINING FUND;
17 ELECTRICAL CONTRACTORS TRUST; CONTRACTORS ADMINISTRATION FUND; and
18 LABOR MANAGEMENT COOPERATION FUND ("TRUST FUNDS") are express trust funds
19 organized and existing under the laws of the United States as employee benefit plans with their
20 principal place of business located in Alameda County in the State of California. Plaintiff TRUST
21 FUNDS were created by written trust agreements pursuant to Section 302 of the Labor-Management
22 Relations Act, 29 U.S.C. §186. Plaintiff TRUST FUNDS are also multi-employer employee benefit
23 plans as defined by ERISA, 29 U.S.C. §1002(3) and 37(a), 29 U.S.C. §1003 and 29 U.S.C.
24 §1132(d)(1). Plaintiff ELECTRICAL INDUSTRY SERVICE CORPORATION ("EISC") is the
25 organization that serves as the custodian of all fringe benefit contributions collected under the Alameda
26 County Inside Construction Agreement between Local Union 595, International Brotherhood of
27 Electrical Workers and Northern California Chapter, National Electrical Contractors Association
28 ("Inside Construction Agreement" or "CBA"). The EISC is the collection agent for the TRUST

1 FUNDS. Plaintiffs VICTOR UNO and DON CAMPBELL are Trustees of the TRUST FUNDS and
2 Officers of the EISC.

3 At all times relevant hereto, Defendant WILSON ELECTRIC CO. ("WEC"), a sole
4 proprietorship, has been an employer within the meaning of 29 U.S.C. §1002(5); operated as an
5 electrical contractor, and employed individuals represented by IBEW Local 595 to perform electrical
6 services on jobs in Alameda County, California; and been obligated to make employer contributions to
7 the TRUST FUNDS pursuant to the CBA. WEC's address is 610 16th St. Suite 506, Oakland, CA
8 94612.

9 Plaintiffs are informed and believe, and on that basis allege, that Defendant ROBERT
10 WILSON is the sole owner of WEC, and that at all times material hereto, Defendant WEC was and is
11 the alter-ego of Defendant ROBERT WILSON. Plaintiffs are ignorant of the true names or capacities
12 of the Defendants sued herein under the fictitious names of DOES ONE through TEN, inclusive.
13 Plaintiffs will seek to amend this Complaint to allege such names and capacities as soon as they are
14 ascertained.

15 Pursuant to written trust agreements, Plaintiff TRUST FUNDS were established for the sole
16 and exclusive purpose of providing health and welfare benefits, pension benefits and other benefits to
17 employees covered by the CBA, and to their dependants and beneficiaries. Plaintiff TRUST FUNDS
18 are third party beneficiaries to the CBA. As a signatory to the CBA, Defendant WEC is obligated to
19 participate in the TRUST FUNDS in accordance with the TRUST FUNDS' governing documents,
20 including the trust agreements, which establish the plans and the rules and regulations adopted by the
21 Trustees of the TRUST FUNDS. Under the CBA, Defendant WEC is obligated to make monthly
22 reports to the TRUST FUNDS of the hours worked by employees covered by the CBA, and to make
23 contributions to the TRUST FUNDS based on these hours at rates set forth in the CBA. The reports
24 and contribution payments for any calendar month are due by the 20th day of the following month.
25 Under the trust agreements, an employer that fails to file an accurate and complete report of the hours
26 worked by employees under the CBA is presumed to owe the TRUST FUNDS contributions equal to
27 the greater of the contributions due for the previous month, the average of the contributions due for the
28 previous three (3) months, or the average of the contributions due for the previous twelve (12) months.
Pursuant to the terms of the trust agreements, employers such as WEC who fail to make full and timely

1 contributions to the TRUST FUNDS are obligated to pay liquidated damages of twenty percent (20%)
 2 of the unpaid balance, plus interest at the rate set by the Trustees of the TRUST FUNDS (currently
 3 12% simple interest per annum), and costs incurred in collecting delinquent contributions, including
 4 attorneys' fees.

5 Defendant WEC failed and refused to make full and timely contributions to TRUST FUNDS
 6 for the period from July to December, 2009. Additionally, Defendant WEC has failed and refused to
 7 report the hours worked by employees covered by the CBA since December, 2009, and to make full
 8 and timely contributions to the TRUST FUNDS of the amounts owed based on these hours. Under the
 9 terms of the trust agreements, and based on Defendants' own benefit contribution reports, Defendants
 10 owe TRUST FUNDS the following amounts:

- 11 a. \$33,237.39 in unpaid contributions, liquidated damages and interest through March 20,
 12 2010.
- 13 b. Additional interest on the delinquent amounts at the rate of 12% simple interest per annum
 14 from March 21, 2010, until Defendants' obligations are paid in full, according to proof.
- 15 c. Additional contributions for all hours worked by employees covered by the CBA but not
 16 reported to the TRUST FUNDS from July 1, 2009 to January 1, 2010, plus interest and
 17 liquidated damages on all contributions owed but not timely paid, according to proof.
- 18 d. Additional contributions for all hours worked by employees covered by the CBA from
 19 February 1, 2010 until Defendants' obligations are paid in full, plus interest and liquidated
 20 damages on all contributions not timely paid, according to proof;
- 21 e. Costs of suit and reasonable attorneys fees, according to proof.

22 3. Legal Issues:

23 (a) Whether Defendants breached their duty under ERISA and applicable collective
 24 bargaining agreements to make full and timely contributions to Plaintiff Trust Funds.

25 (b) Whether Plaintiffs are entitled to damages, costs, attorneys' fees, declaratory and
 26 injunctive relief, or any of the other remedies they seek.

27 4. Motions

28 No motions have been filed. Plaintiffs anticipate filing a motion for summary judgment no
 later than December 15, 2010.

1 **5. Amendment of Pleadings.**

2 The parties do not anticipate any need to file amended pleadings.

3 **6. Evidence Preservation:**

4 Both parties' counsel have instructed their clients to collect and retain all written documents,
5 records and other things (including e-mails, voicemails, electronically-recorded material) supporting
6 their claims and damages in this case.

7 **7. Disclosures:**

8 The parties have complied with the initial disclosure requirements of Fed. R. Civ. P. 26, and
9 will continue to produce documents relevant to this case should such be discovered.

10 **8. Discovery:**

11 Plaintiffs' Proposed Discovery Plan: On September 17, 2010, Plaintiffs propounded and served
12 on Defendants a set of requests for admission, which Defendants failed to answer. Plaintiffs do not
13 anticipate a need for further discovery.

14 **9. Class Actions:**

15 This case is not appropriate for class treatment.

16 **10. Related Cases:**

17 The parties are unaware of any related cases at this time.

18 **11. Relief:**

19 Plaintiffs seek monetary damages, as well as declaratory and injunctive relief.

20 **12. Settlement and ADR:**

21 The parties have agreed to engage in mediation through the Court. However, the parties expect
22 to settle this matter without the need for a mediator.

23 **13. Consent to Magistrate Judge for All Purposes:**

24 The parties have consented to the assignment of a Magistrate Judge for all purposes.

25 **14. Other References:**

26 None.

27 **15. Narrowing of Issues:**

28 No further narrowing of Plaintiffs' issues is possible.

1 **16. Expedited Schedule:**

2 The parties will agree to a bench trial. However, Plaintiffs will file a motion for summary
3 judgment no later than December 15, 2010 and do not anticipate a need for trial.

4 **17. Scheduling:**

5 The Complaint in this case was filed on April 7, 2010. Defendant filed his answer on May 6,
6 2010. The parties were unable to reach agreement to settle this case, and Plaintiffs are preparing a
7 motion for summary judgment. Plaintiffs will move for summary judgment by December 15, 2010,
8 with a hearing set for January 19, 2011. The parties request that the case management conference
9 scheduled for December 15, 2010 be continued until after January 19, 2011.

10 **18. Trial:**

11 The parties estimate that a bench trial could take from one to four hours, depending on the
12 extent to which the parties can stipulate to factual matters.

13 **19. Disclosure of Non-party Interested Entities of Persons:**

14 The parties have filed their Certification of Interested Entities or Persons. At this time, neither
15 party is aware of any non-party persons, firms, partnerships, corporations (including parent
16 corporations) or other entities which have either: (i) a financial interest in the subject matter in
17 controversy or in a party to the proceeding; or (ii) any other kind of interest that could be substantially
18 affected by the outcome of the proceeding.

19 **20. Request for Continuance of Case Management Conference**

20 As set forth above, Plaintiffs are preparing to move for summary judgment, and will do so no
21 later than December 15, 2010. Plaintiffs will set the hearing on their motion for summary for January
22 19, 2011. The parties request that the case management conference set for December 15, 2010 be
23 continued until after the January 19, 2011 hearing on Plaintiffs' motion.

24 DATED: December 8, 2010

LEONARD CARDER, LLP

25 By: _____

Phil A Thomas

Attorneys for Plaintiffs IBEW Local 595 Trust
26 Funds et al
27
28

1 DATED: December 8, 2010

2
3 By: _____

Michael R. Sullivan
Attorney for Defendant Robert Wilson,
individually and as owner and alter-ego of Wilson
Electric Co.

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7 The Case Management Conference is continued to Wednesday, February 2, 2011 at 10:30 a.m.

